Remarks:

Applicant has carefully studied the final Examiner's Action mailed February 05, 2009. Applicant thanks the Examiner for their careful attention in reviewing the application. The amendments appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is now believed to be in condition for allowance.

Applicant responds to the outstanding Action by centered headings that correspond to the order that the Office addressed the issues raised in the action, to ensure full response on the merits to each finding of the Office.

Status of the Claims

Claims 1-8 and 20-35 were pending and under examination in the Office Action mail dated February 05, 2009.

The Office has indicated that claims 1-8 and 20-25, with the exception of an objection to inconsistent terminology used in the claims, are allowable.[1] The Office has further indicated that claim 28 was objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.[2]

Claims 1-8, 20-25 and 28 are therefore put in condition for allowance. An objection to claims 1-8 and 20-35 was made by the Office regarding the inconsistent usage of the terms "quinoa fruit" (claims 1-4) and "quinoa grain" (claims 5-8 and 20-35; actually recited in claims 5, 20, 21, 26, 31, and 35) as indicated immediately below. Claims 5, 20, 21, 26, 31, and 35 have been amended to recite "quinoa fruit" where "quinoa grain" was previously recited in the claims. In adopting the term "quinoa fruit" Applicant notes that the term is addressed at para. [0008] of the specification of the application where it is stated, "Quinoa is a pseudocereal named for its production of small grain-like seeds, although the actual harvested grain is a single seeded fruit." Thus, it is more technically correct to say that isolation of the protein is

[1] Office Action mail dated February 05, 2009 at page 5.
[2] *Id.*

from the "fruit" as opposed to the "grain", and therefore reference is made in claims to the quinoa fruit.

As indicated above, claim 28 was objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 28 was dependent upon independent claim 26 and there were no intervening claims. Rather than amending claim 28, claim 26 has been amended to include the limitations of claim 28 and claim 28 has been cancelled. The claims previously dependent upon claim 26 (i.e. claims 27, and 29-30) have been retained. It is respectfully submitted that these claims are allowable as a matter of law over the art of record as being dependent upon an allowable base claim.

Claim 27 has been amended to recite "quinoa starch and fiber product", as opposed to "quinoa starch/fiber product", thereby resolving any ambiguity that may have resulted from the prior recitation.

Previously pending claims 31-35 are cancelled herein without prejudice. Applicant reserves the right to pursue the subject matter of previously pending claims, including claims 26-27 and 29-30 as presented prior to the instant amendment and canceled claims 31-35, in one or more continuations, continuation-in-part or divisional applications.

No other claims have been amended, canceled or withdrawn. Therefore, claims 1-8, 20-27 and 29-30 are currently pending and in condition for allowance.

Claim Objections

Quinoa Fruit/Quinoa Grain:

Claims 1-8 and 20-35 have been objected to due to informalities in the claims. In particular, the Office has noted that claims 1-4 recite "quinoa fruit," whereas the remainder of the claims (i.e. claims 5-8 and 20-35) recite "quinoa grain." The Office has requested that Applicants "recite either 'grain' or 'fruit' throughout the claims for consistency since it may appear as if 'quinoa fruit' and 'quinoa grain' are two different products and/or inventions."

Claims 5, 20, 21, and 26 have been amended to recite "quinoa fruit" where "quinoa grain" was previously recited in the claims. Claims 31 and 35 also previously recited "quinoa grain," however claims 31-35 are canceled herein, rendering moot the objection to those claims. None of the other claims recite the term "quinoa grain."

In light of Applicants' amendments it is respectfully requested that the Office withdraw the objection to claims 1-8 and 20-35.

Claim Rejections – 35 U.S.C. § 112

Applicant acknowledges the quotation of 35 U.S.C § 112, second paragraph. Claims 27 and 31-35 stand rejected under 35 U.S.C § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It was asserted that claims 27 and 31-32 were rendered indefinite due to the recitation of the phrase "[quinoa] starch/fiber product" in the claims. Claim 27 has been amended to recite "quinoa starch and fiber product", as opposed to "quinoa starch/fiber product", thereby resolving any indefiniteness that may have resulted from the prior recitation. Claims 31 and 32 have been canceled in the instant response, thereby rendering moot their rejection under 35 U.S.C § 112, second paragraph.

The Office has noted that claim 27, line 2, recites "the separated fiber…" The Office has requested clarification of whether "the separated fiber…" is the same as the "insoluble fiber" recited in claim 26(e). The "separated fiber" recited in claim 27 is a product of the separating step in claim 26 and results from that step whereby the insoluble fiber is separated from the solubilized protein.

In light of the amendments to the claims and the preceding explanations, along with the cancellation of claims 31-35, it is respectfully requested that the Office withdraw the rejection of claim 27 under 35 U.S.C § 112, second paragraph.

Claim Rejections – 35 U.S.C. § 103

Applicant acknowledges the quotation of 35 U.S.C § 103(a). Claims 26, 29-31 and 33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Garrison et al. (U.S. Patent No. 4,175,075) in view of Horisberger et al. (U.S. Patent No. 4,072,666) ("Garrison in view of Horisberger").

The rejection of claims 31 and 33 is rendered moot by the cancellation of those claims in the instant response.

Claim 26 has been amended to include the limitations of dependent claim 28. The Office had indicated that claim 28 was objected to as being dependent upon rejected claim 26, but otherwise allowable if re-written in independent form.[3] Claim 26, as amended herein, recites all of the limitations of previously presented claim 28 including all limitations of its base claim and intervening claims. Amended claim 26 is therefore allowable over the art of record. Claims 27 and 29-30 are allowable over the art of record as a matter of law as being dependent upon an allowable base claim (i.e. amended claim 26).

Based upon the foregoing it is respectfully requested that the Office withdraw the rejection of claims 26 and 29-30 under 35 U.S.C. 103(a) as being unpatentable over Garrison et al. (U.S. Patent No. 4,175,075) in view of Horisberger et al. (U.S. Patent No. 4,072,666).

Conclusion

For the reasons cited above, Applicant believes that claims 1-8, 20-27 and 29-30, as amended, are patentable and in condition for allowance.

If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (813) 925-8505 is requested.

Very respectfully,

SMITH & HOPEN

By: /michael m mcgaw/

Dated: March 20, 2009

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[3] Office Action mail dated February 05, 2009 at page 5.

CERTIFICATE OF ELECTRONIC TRANSMISSION TRANSMISSION
(37 C.F.R. 2.190(B))

I HEREBY CERTIFY that this Amendment A is being electronically transmitted to the United States Patent and Trademark Office through EFS Web on March 20, 2009.

Date: March 20, 2009

/lauren reeves/
Lauren Reeves